IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1919 of 2001

to

FIRST APPEAL No 1942 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? 1 to 5 No : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

SHAMBHUBHAI ISHWARBHAI PATEL

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Appearance:

MR MUKESH PATEL AGP for Appellants

MR JM PATEL for MR AJ PATEL for respondent-claimants as Caveators.

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CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 01/05/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This group of 24 First Appeals preferred by the Special Land Acquisition Officer, Unit No.3, Ahmedabad and the Executive Engineer, Construction Dvn. 4/3, Narmada Project, Viramgam 1, Branch Canal, Kadi under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 is directed against the judgment and order dated 2.3.2000 passed by the Assistant Judge, Mehsana in Land Acquisition Reference Cases No.280/96 to 289/96 and Land Acquisition Reference Cases No.81/96 to 94/96.

2. The lands of Village Sedaradi, Taluka Kadi, District Mehsana were sought to be acquired for Narmada Irrigation Project. For this purpose, the notification under Section 4 was issued in Land Acquisition Case No.57/92 on 23.6.1992 and in Land Acquisition Case No.3/92 on 30.4.1992. The notifications under Section 6 were issued on 23.4.1993 and 16.7.1993 respectively. The Land Acquisition Officer passed the award in Land Acquisition Case No.57/92 on 23.11.1994 and in Land Acquisition Case No.3/92 on 29.7.1994. By this award, the Land Acquisition Officer fixed the rate of compensation as Rs.2.70 per sq. mtr. The claimants being dissatisfied took the matter for Reference under Section 18 claiming Rs.30/- per sq. mtr. The Reference Court has decided the References by granting Rs.24/- per sq. mtr. as additional compensation making the compensation payable at the total rate of Rs.26.70 per sq. mtr.

3. The Reference Court has relied upon the deposition of Shri Ranchhodbhai A. Patel examined on behalf of the claimants at Exh.13; village Form 7/12 at Exh.14; previous awards at Exhs.15, 16 and 23; and deposition of Shri Ambalal Shankarbhai and Shri Vinodbhai Shivabhai, who were examined on behalf of the acquiring bodies.

4. Mr.Mukesh Patel, learned Assistant Government Pleader has assailed the impugned order on the grounds that no analogy could be drawn from the previous awards at Exhs.15, 16 and 23 and that 10% increase per annum as has been granted is wrong and that the References had not been filed within time. It is not in dispute on the basis of the evidence on record that the village Sedaradi is a village adjacent to other villages Vidaj, Shiyapura

and Kasva which were the concerned villages in the cases of Exhs.15, 16 and 23. It has also come on record that all these villages are in a distance of 10 kms. However, a dispute has been raised with regard to the development part of it and it is said that the lands of village Sedaradi are not as developed as those of villages Vidaj, Shiyapura and Kasva.

5. In case of Exh.15 previous award relating to village Vidaj, the date of notification under Section 4 was 29.8.1991. The District Court had awarded the rate of compensation as Rs.28/- per sq. mtr. and the High Court had reduced it to Rs.26.60 per sq. mtr.

6. In case of Exh.16, i.e. village Shiyapura, the date of notification under Section 4 was 18.4.1991 and the Reference Court had awarded the rate of compensation as Rs.28/- per sq. mtr., which too was reduced by the High Court to Rs.26.60 per sq. mtr.

7. In Exh.23 award relating to village Kasva, the date of issue of notification under Section 4 was 6.7.1992 and the Reference Court had awarded the rate of compensation as Rs.28.70 per sq. mtr. and this decision of the Reference Court awarding compensation @ Rs.28.70 per sq. mtr. was not appealed against and the same was accepted by the Government and the amount had been paid.

8. So far as the development part is concerned, we may straightway point out that the body of the impugned order itself shows that the Reference Court has taken due care on this aspect while determining the rate and it has been mentioned in the end of para 14 that, according to the settled norms, the expenses to be incurred in future with regard to development etc. has to be deducted and the rate of Rs.26.70 per sq. mtr. has been determined after deducting a sum of Rs.5.30 per sq. mtr. from the compensation of Rs.32/- per sq. mtr. which was arrived at by the Reference Court on the basis of the material which was available before it by making the decision in Land Reference Cases No.58/93 to 61/93 relating to village Dhudhai as the basis wherein the rate of compensation was fixed at Rs.21/- per sq. mtr.

9. So far as granting of 10% increase per annum with reference to the date of issue of notification under Section 4 is concerned, it is the settled norm that increase is being allowed in all the cases and, therefore, there is no question of any grievance with regard to increase of 10% per annum.

10. No material whatsoever has been placed on record to show that the References were time-barred. It has not been shown that any Notice under Section 12 (2) had been issued and served and it is not the case of the appellants before this Court that the awards had been passed in presence of the claimants or their lawyers. Thus, all the grounds as have been raised before us on behalf of the appellants fail. The amount of compensation of Rs.26.70 per sq. mtr. as has been granted in the instant case is found to be in order and in conformity with the previous decisions of this Court in cases of Exhs.15 and 16 as also in case of Exh.23 which had been accepted by the Government itself and no appeal was preferred against it. We do not find any reason to interfere with the impugned order merely for changing the rate from Rs.26.70 per sq. mtr. to Rs.26.60 per sq. mtr. as has been sought to be argued. All these appeals are hereby dismissed with no order as to costs.

11. It is expected that the due amount of compensation shall be paid to the respondent-claimants within a period of three months from the date the certified copy of this order is produced before the concerned authorities by either of the parties.

Sd/-

( M.R.Calla, J.)

Sd/-

01.5.2001 ( D.H.Waghela, J.)

(KMG Thilake)